

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

THE LOCAL SPOT, INC., et al.,)	
)	
Plaintiffs,)	Case No. 3:20-cv-00421
)	
v.)	Judge Richardson
)	Magistrate Judge Holmes
WILLIAM B. LEE, et al.)	
)	
Defendants.)	
)	
)	

DISCOVERY DISPUTE STATEMENT¹

Defendants Mayor John Cooper and Director of Health Dr. Michael Caldwell sued in their official capacities (“Metro”) hereby provide this Discovery Dispute Statement. The Metropolitan Government intends to file a motion to stay discovery in this case until its pending dispositive motion is decided or, in the alternative, until the Court holds its September 30, 2020, case management conference at which all parties, including the recently-served individual Defendants, can participate. Plaintiffs oppose a stay of discovery and specifically wish to move forward with the depositions of Mayor John Cooper and a Health Department epidemiologist, Dr. Leslie Waller, next Friday, September 4. The Metro Defendants intend to file a motion for protective order related

¹ Undersigned counsel has not yet heard back from Plaintiffs’ counsel as to availability for a discovery dispute conference tomorrow at 9:00 or 9:30 a.m. and thus has not had the opportunity to include Plaintiffs’ position in this statement. However, due to the Court’s limited availability for a discovery dispute conference at any alternative times prior to September 4, 2020, and the urgent need for guidance as to how to proceed, particularly with regard to the noticed deposition of Mayor Cooper, Metro files this statement setting forth only its own position as to the nature of the discovery dispute.

to those depositions, if necessary, to prevent them from going forward on the date and times noticed.

1. Metro's Position:

The basis for Metro's motion to stay all discovery can be summarized as follows: (1) the Court has stayed "this litigation, under the *Younger* abstention doctrine, as to any aspect of the claims related to the issuance and prosecution of the three applicable [Health Department and Beer Board] citations" (Doc. No. 59), and thus Metro seeks an order explicitly staying discovery as to those claims as well; (2) Metro has a dispositive motion pending, and the extensive written discovery and depositions sought by Plaintiffs would unduly burden already over-taxed government officials and employees, such as the Mayor, The Director of Health, and Department of Health epidemiologists, who are in the midst of fighting a global pandemic and can ill-afford to take substantial time out of those efforts to respond to discovery or appear for depositions on claims that Metro submits are likely to be dismissed by the Court; and (3) staying discovery at least until the scheduled September 30, 2020, case management conference avoids prejudice to the recently-served individual Defendants whose deadlines for filing responsive pleadings has not even run as of yet.

Moreover, specifically as to the deposition of Mayor Cooper, heads of government agencies should not be subject to routine deposition, particularly in times of crisis such as what the City of Nashville is currently facing. And it is highly likely that much of the information sought would be protected by the deliberative process privilege in any event. It is Metro's position that, setting aside issues of this deposition being premature given that there is not even a case management order entered in this case, Plaintiffs have not shown that Mayor Cooper has some particular individualized knowledge that Plaintiffs can only glean from the Mayor and which

would make their likelihood of succeeding on their claims any greater. Nor have Plaintiffs articulated why a lengthy deposition is the most efficient means of gaining the information sought, whatever it may be. Accordingly, Metro submits that an order preventing the deposition from going forward or, at a minimum, formally limiting the deposition in time and scope, is necessary.

Respectfully submitted,

DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
ROBERT E. COOPER, JR. (#10934)
DIRECTOR OF LAW

/s/ Keli J. Oliver

Keli J. Oliver (#21023)

Michael R. Dohn (#37535)

Assistant Metropolitan Attorneys

Metropolitan Courthouse, Suite 108

P.O. Box 196300

Nashville, Tennessee 37219

(615) 862-6341

keli.oliver@nashville.gov

michael.dohn@nashville.gov

Attorneys for Mayor Cooper and Dr. Caldwell

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing has been served via CM/ECF to:

Kirk L. Clements
Attorney for Plaintiffs
105 Broadway, Ste. 2
Nashville, TN 37201

James Bryan Lewis
Attorney for Plaintiffs
214 Second Avenue North, Suite 103
Nashville, TN 37201

on this 24th day of August 2020.

/s/ Keli J. Oliver
Keli J. Oliver